

News From _____

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STATEMENT OF SENATOR ROBERT C. BYRD (D-W.Va.)
Senate Rules and Administration Committee
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“The Filibuster And Its Consequences”

On September 30, 1788, Pennsylvania became the first state to elect its United States senators, one of whom was William Maclay. In his 1789 journal Senator Maclay wrote, “I gave my opinion in plain language that the confidence of the people was departing from us, owing to our unreasonable delays. The design of the Virginians and of the South Carolina gentlemen was to talk away the time, so that we could not get the bill passed.”

Our Founding Fathers intended the Senate to be a continuing body that allows for open and unlimited debate and the protection of minority rights. Senators have understood this since the Senate first convened.

In his notes of the Constitutional Convention on June 26, 1787, James Madison recorded that the ends to be served by the Senate were “first, to protect the people against their rulers, secondly, to protect the people against the transient impressions into which they themselves might be led... They themselves, as well as a numerous body of Representatives, were liable to err also, from fickleness and passion. A necessary fence against this danger would be to select a portion of enlightened citizens, whose limited number, and firmness might seasonably interpose against impetuous councils.” That “fence” was the United States Senate.

The right to filibuster anchors this necessary fence. But it is not a right intended to be abused.

During this 111th Congress in particular the minority has threatened to filibuster almost every matter proposed for Senate consideration. I find this tactic contrary to each Senator’s duty to act in good faith.

I share the profound frustration of my constituents and colleagues as we confront this situation. The challenges before our nation are far too grave, and too numerous, for the Senate to be rendered impotent to address them, and yet be derided for inaction by those causing the delay.

There are many suggestions as to what we should do. I know what we must not do.

We must never, ever, tear down the only wall – the necessary fence - this nation has against the excesses of the Executive Branch and the resultant haste and tyranny of the majority.

The path to solving our problem lies in our thoroughly understanding it. Does the difficulty reside in the construct of our rules or in the ease of circumventing them?

A true filibuster is a fight, not a threat or a bluff. For most of the Senate’s history, Senators motivated to extend debate had to hold the floor as long as they were physically able. The Senate was either persuaded by the strength of their arguments or unconvinced by either their commitment or their stamina. True

filibusters were therefore less frequent, and more commonly discouraged, due to every Senator's understanding that such undertakings required grueling personal sacrifice, exhausting preparation, and a willingness to be criticized for disrupting the nation's business.

Now, unbelievably, just the whisper of opposition brings the "world's greatest deliberative body" to a grinding halt. Why?

Because this once highly respected institution has become overwhelmingly consumed by a fixation with money and media.

Gone are the days when Senators Richard Russell and Lyndon Johnson, and Speaker Sam Rayburn gathered routinely for working weekends and couldn't wait to get back to their chambers on Monday morning.

Now every Senator spends hours every day, throughout the year and every year, raising funds for re-election and appearing before cameras and microphones. Now the Senate often works three-day weeks, with frequent and extended recess periods, so Senators can rush home to fundraisers scheduled months in advance.

Forceful confrontation to a threat to filibuster is undoubtedly the antidote to the malady. Most recently, Senate Majority Leader Reid announced that the Senate would stay in session around-the-clock and take all procedural steps necessary to bring financial reform legislation before the Senate. As preparations were made and cots rolled out, a deal was struck within hours and the threat of filibuster was withdrawn.

I heartily commend the Majority Leader for this progress, and I strongly caution my colleagues as some propose to alter the rules to severely limit the ability of a minority to conduct a filibuster. I know what it is to be Majority Leader, and wake up on a Wednesday morning in November, and find yourself a Minority Leader.

I also know that current Senate Rules provide the means to break a filibuster. I employed them in 1977 to end the post-cloture filibuster of natural gas deregulation legislation. This was the roughest filibuster I have experienced during my fifty-plus years in the Senate, and it produced the most-bitter feelings. Yet some important new precedents were established in dealing with post-cloture obstruction. In 1987, I successfully used Rules 7 and 8 to make a non-debatable motion to proceed during the morning hour. No leader has attempted this technique since, but this procedure could be and should be used.

Over the years, I have proposed a variety of improvements to Senate Rules to achieve a more sensible balance allowing the majority to function while still protecting minority rights. For example, I have supported eliminating debate on the motion to proceed to a matter (except for changes to Senate rules), or limiting debate to a reasonable time on such motions, with Senators retaining the right to unlimited debate on the matter once before the Senate. I have authored several other proposals in the past, and I look forward to our committee work ahead as we carefully examine other suggested changes. The Committee must, however, jealously guard against efforts to change or reinterpret the Senate rules by a simple majority, circumventing Rule XXII where a two-thirds majority is required.

As I have said before, the Senate has been the last fortress of minority rights and freedom of speech in this Republic for more than two centuries. I pray that Senators will pause and reflect before ignoring that history and tradition in favor of the political priority of the moment.

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